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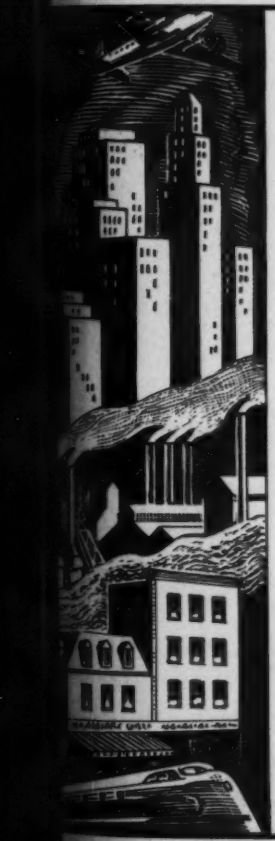

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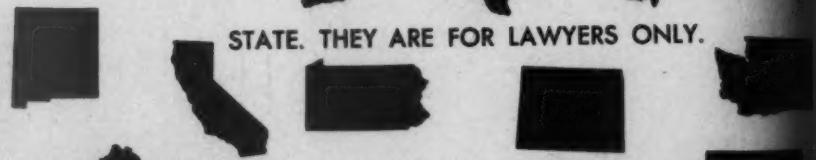

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doing business in new states

Atlantic Seaboard States—Domestic Companies Annual State Taxes

COUNSEL is concerned, from time to time, with the situation of a corporation which is considering moving its home office and plant to a state in the Atlantic coastal group, in which the company is to qualify[1], or in which the re-incorporation of the company is under consideration. Where it is feasible to consider more than one state before reaching a decision, the impact of the *annual taxes* imposed by the eligible states is one of the important factors to be weighed.

This discussion, limited to a consideration of annual state taxes of a *domestic* corporation, outlines generally the probable incidence of annual taxes upon such a domestic company, with specific reference to income taxes, franchise taxes, sales taxes, chain store taxes and property taxes. Usually, of course, many factors other than tax considerations also enter into the final selection of a state for the re-location and possible re-incorporation of a corporation, such as proximity to markets, labor, available sites and the provisions of local laws, corporate and otherwise.

Connecticut's income (franchise) tax rate is relatively low. Its real and tangible personal property tax rates are comparatively low. The state does not impose a property tax on intangibles. The retail sales and use tax rate is 3% through June 30, 1957, and 2% thereafter.

Delaware has no corporate income tax. It imposes a moderate franchise tax on domestic corporations. Its real property tax rates are low throughout the state and it imposes no property tax upon tangible or intangible personal property of business corporations. While there is no retail sales tax, there are state license taxes which apply to local merchants and manufacturers.

Florida has no income tax and no franchise tax. The rate applied to real property and tangible personal property is moderate and the rates applicable to intangibles, which are separately classified for property tax purposes, are low. The filing fee related to the annual report, referred to at times as a "capital stock tax" and as a "franchise tax", is not high and is subject to apportionment within and without the state. A 3% retail sales and use tax is imposed and a state tax is in effect with respect to chain stores operated in the state.

Georgia's income tax rate is 4%. It also imposes a moderate franchise or license tax. The ad valorem tax rates applicable to real property and tangible personal property are moderate and the rates applying to intangibles having a Georgia situs, which are separately classified for property tax purposes, are low. A 3% retail sales and use tax is levied.

Maine has no income tax. It imposes a moderate franchise tax upon domes-

[1] For a discussion of the selection of a state in which qualification may be effected under such circumstances, see *"Doing Business in New States—Atlantic Seaboard States —Qualification,"* The Corporation Journal, October—November, 1956, page 263.

tic corporations. Its property tax rates are moderate. A 2% retail sales and use tax is imposed.

Maryland's income tax rate is 5%. Its property tax rates, imposed upon real estate and tangible personal property, are comparatively moderate, while practically all intangibles are exempt. There is a franchise tax imposed upon domestic corporations. A 2% retail sales and use tax is levied, and there is a license tax on the operation of stores in the state, in addition to a "trader's" license tax.

In *Massachusetts,* although tangible and intangible personal property of domestic corporations is not taxable, real property tax rates are comparatively high in many instances and the franchise (excise) tax consists of a combined income tax (5½%) and a corporate excess tax ($5 per $1,000), plus certain surtaxes.

New Hampshire imposes a moderate annual franchise tax upon domestic corporations and there is an annual report filing fee of $15. No income or retail sales tax is levied, and property tax rates may be regarded as moderate in most areas.

New Jersey has a moderate franchise tax, but imposes no income or retail sales tax and levies no tax on intangible personal property. The rates applying to real property and tangible personal property are comparatively high in some of the larger communities.

In *New York,* the rate of the franchise tax upon business corporations based upon apportioned net income is 5½%. While personal property, both tangible and intangible, is exempt, real property tax rates range from moderate to high. New York City imposes a gross receipts tax and a 3% retail sales and compensating use tax.

North Carolina's income tax rate is 6%. In addition, there is a moderate franchise tax. Property tax rates on real estate and tangible personal property are relatively low, as are the rates on intangible personal property, which is classified and taxed by the state. A chain store tax is levied and there is a 3% retail sales and use tax and a tax on wholesale sales of 1/20 of 1%.

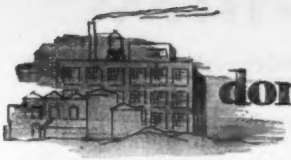
In *Pennsylvania,* tangible and intangible personal property of domestic corporations is not taxed. However, while real property taxes may be said to be moderate, the income tax rate is 6%. A 3% selective sales and use tax is imposed, the rate of which is scheduled to be reduced to 2% on June 1, 1957.

The *Rhode Island* income tax rate is 5%, with certain minimum alternatives. Intangible property of corporations subject to the income tax is exempt from property taxes. The rates applying to real property and tangible personal property are relatively low. A retail sales and use tax of 2% is to be levied until May 31, 1957, when the rate is to change to 1%.

South Carolina's corporate income tax rate is 5%. A moderate annual license tax is imposed. The rate applied to real property and tangible personal property is relatively low. A retail sales and use tax of 3% is levied.

In *Vermont,* a 5% income or franchise tax is imposed upon net income apportioned to the state, the minimum tax being $25. Property taxes are moderate.

In *Virginia,* the income tax rate is 5%. This state imposes a relatively low franchise tax on domestic corporations. There is an annual registration fee with a maximum of $25. Real property, tangible personal property and classified intangible property tax rates are comparatively low. While neither sales, use or chain store taxes are levied, license taxes are imposed on retail merchants, wholesale merchants and distributors.



domestic corporations

DELAWARE

Stockholder of record ruled entitled to maintain suit to question validity of election of directors.

Plaintiff Delaware corporation, the registered holder of 750,000 shares of common stock of the defendant Delaware corporation, sought a statutory review of the validity of the election of defendant's board of directors at an annual meeting of stockholders of defendant, charging irregularities in the holding of the election. The complaint as originally drawn prayed for an order directing a new election and granting leave to plaintiff to inspect and copy defendant's stock ledger prior to such election. By amendment to its complaint, plaintiff sought additional relief in the form of a declaratory judgment to the effect that plaintiff had a proper standing to maintain this action in the Court of Chancery, New Castle County, as the beneficial as well as the record holder of defendant's stock. Defendant, while admitting plaintiff's record ownership, denied it was the beneficial owner of the stock, alleging in its answer that when plaintiff acquired stock in defendant pursuant to certain arrangements made between the parties, it was agreed that plaintiff would distribute such stock to its stockholders "within a reasonable time" after the expiration of sixty days from a consummation of the transaction between the parties. Defendant asserted plaintiff was not entitled to assert the status or right of a stockholder as such, and, accordingly, was not entitled to the relief prayed for.

The court ruled that plaintiff had a proper standing to maintain the action and was under no obligation to defendant to undertake distribution of the 750,000 shares of stock of defendant acquired by the plaintiff and registered in plaintiff's name, and observed: "I am satisfied that defendant at the time of the entering into of the transaction here involved was concerned primarily with its desire to obtain plaintiff's assets, including cash in the amount of $430,000, in exchange for stock and that this was the contract which the parties made. They did not contract as to how or when plaintiff would dispose of its South Texas stock in future except to agree that such distribution was not to be made by plaintiff until after the expiration of sixty days from consummation of the purchase and sale. Defendant's efforts at trial were in effect an attempt to redraft an unambiguous contractual arrangement."

North American Uranium and Oil Corporation v. South Texas Oil and Gas Company, Court of Chancery, New Castle County, February 8, 1957. Alexander L. Nichols of Morris, Steel, Nichols & Arsht, of Wilmington, and James L. Purcell of Crisona Brothers of New York City, for plaintiff. Clarence W. Taylor of Hastings, Lynch & Taylor, of Wilmington, and Charles T. Lynam of Corpus Christi, Texas for defendant.

Motion to dismiss federal indictment against merged Delaware corporation, based on ground that corporate existence terminated upon merger, is denied.

One of the defendants, who were under indictment charging violations of the federal Robinson-Patman Act, a Delaware corporation, moved, in the United States District Court for the District of Columbia, to dismiss the indictment on the ground that its corporate existence was terminated by merger, in accordance with applicable Delaware law, with another corporation. The court cited the applicable Delaware statute governing the consequences of a merger found in Section 261 of the Delaware Corporation Law, providing: "Any action or proceeding pending by or against any of the corporations consolidated or merged may be prosecuted as if such consolidation or merger had not taken place, or the corporation resulting from or surviving such consolidation or merger may be substituted in its place."

In denying the motion of the corporation to dismiss the indictment, the court remarked that it was well established that the term "proceeding" includes criminal prosecutions and is not limited to civil actions, noting that the Federal Rules of Criminal Procedure use the term "proceeding" as applicable to criminal prosecutions. The court therefore concluded that the indictment had not abated as against the moving defendant, in spite of the fact that this defendant had merged into another corporation.

United States of America v. Maryland & Virginia Milk Producers, Inc. et al., 145 F. Supp. 374. John J. Wilson of Washington, D. C., for defendant Chestnut Farms-Chevy Chase Dairy Co., for the motion. Joseph J. Saunders and Edna Lingreen, Department of Justice, Washington, D. C., opposed.

Shares represented by irrevocable proxies appointing three persons "or a majority of such thereof as shall act," held not to be counted in determining total of by-law percentage necessary to call special meeting.

The by-laws of one of the defendant corporations provided for the calling of a special meeting of the stockholders by the Secretary upon request in writing of recordholders of a least 25% of the outstanding stock entitled to vote at such meeting. The validity of the call for a special meeting was in question, the inclusion of certain shares, necessary to complete the 25% representation, was contested. These shares were represented by irrovocable proxies which appointed three persons "or a majority of such thereof as shall act," and expressly included the "making of any demand for a special meeting or meetings of stockholders." One of these three presented the call for the special meeting, but did not purport to act as attorney in fact for the holders of the proxies. The United States District Court, District of Delaware, examined his right, as one individual proxy holder, to give notice of the call for the special meeting. It concluded that the proxies, drawn to three persons, did not authorize one to act alone, so as to compel the Secretary of the com-

pany to accept notice by him alone and to commit the company to the expense of the special meeting.

Callister v. Graham-Paige Corporation et al., 146 F. Supp. 399. Clair J. Killoran & Van Brunt of Wilmington, for plaintiff. Aaron Finger, Richards, Layton & Finger of Wilmington, Charles H. Tuttle and John R. Brook, Breed, Abbott & Morgan and George Brussel, Jr., Rosston, Hort & Brussel of New York City, for defendant, Thermoid Co. Richard F. Corroon, Berl, Potter & Anderson of Wilmington, Cyrus R. Vance and Eliot B. Weathers, Simpson, Thacher & Bartlett of New York City, for defendants, Graham-Paige Corp. and The Whitney Appollo Corp.

Reorganization plan proposed by corporation unable to communicate with a majority of its shareholders, approved by Chancery Court.

"The petitioner, North European Oil Corporation ('corporation') has been unable to locate its majority stockholders and thus cannot take any action requiring the vote of a majority of its shares. The corporation therefore requests judicial approval of a reorganization plan which is designed to solve this problem." Since 1954, the corporation had not been able to obtain a representation of a majority of its stock at any meeting. It was able to elect directors only with the assistance of the Court of Chancery, pursuant to a statutory procedure. At a special meeting of stockholders held June 21, 1956, at which less than a majority were present, a proposed plan of reorganization designed to solve its problem was overwhelmingly approved by the stockholders in attendance. This plan contemplated that the known stockholders, constituting a minority, would be permitted to become the only stockholders with a vote of a corporation to be formed, subject to the right of the missing stockholders when found to become the holders of voting shares.

The Court of Chancery found ground to entertain the petition in the broad powers of a court of equity, and felt it might dispense with the appointment of a receiver "and itself supervise the granting of appropriate relief once the proper showing has been made". After an examination of the specific circumstances, the court concluded that the petitioner had made out a case entitling it to equitable relief. The plan was approved by the court, which appointed the new corporation trustee for the missing shareholders, with authority to appoint appropriate agents to effectuate the duties imposed upon the trustee.

In the Matter of North European Oil Corporation, Court of Chancery, New Castle County, February 15, 1957. Alexander L. Nichols of Morris, Steel, Nichols & Arsht, of Wilmington and Stanley Law Sabel, of New York City, for petitioner. Edmund N. Carpenter II of Richards, Layton & Finger, of Wilmington, amicus curiae. Aaron Kalb, of Trenton, stockholder, pro se. (129 A. 2d 259.)

State Supreme Court affirms Chancery Court ruling upholding directors in fixing of consideration for sale of "non-liquid" assets of heavy industry business managed by family.

In *Cottrell v. The Pawcatuck Company et al.*, 116 A. 2d 787, (The Corporation Journal, December 1955—January, 1956, page 167), the Chancellor ruled that when "non-liquid" assets of a heavy industry business managed by a family were sold, a reasonable capitalization rate of seven or eight times the normal earnings would approximate the amount to be realized as a going concern value upon such a sale of assets.

This judgment of the Court of Chancery has been affirmed by the Supreme Court of Delaware, which concluded that in fixing the price for the assets sold the directors acted within the reasonable limits of business judgment, and that the plaintiff had failed to show any such gross inadequacy of price as would justify an inference of reckless disregard of the rights of the minority stockholders.

Cottrell v. The Pawcatuck Company et al., 128 A. 2d 225. Douglas W. Troll and Andrew D. Christie of Wilmington, for appellant, and Helen E. Cottrell, pro se. Henry M. Canby of Richards, Layton & Finger of Wilmington, for appellees Pawcatuck Co., Donald C. Cottrell, Ridley Watts, Arthur M. Cottrell and Charles P. Cottrell, Jr. Richard F. Corroon of Berl, Potter & Anderson of Wilmington and Paul J. Bickel of Squire, Sanders & Dempsey of Cleveland, Ohio, for appellees Harris-Seybold Co. and Cottrell Co.

Chancery Court declines to apply three-year statute of limitations in stock option controversy.

In a suit alleging that stock options granted to executive and supervisory employees under a company plan were void and constituted gifts of corporate assets which had not been authorized by unanimous stockholder vote, the defendant corporation, among other things, sought to invoke the three-year statute of limitations.

The Court of Chancery, New Castle County, however, declined to apply the strict bar of the three-year statute of limitations, regarding the suit as "in essence an equitable suit by recission." The court noted that it was "well established that a statute of limitations need not but usually is applied so as to bar an equitable action where there is an analogy between such an action and its counterpart at law," and continued: "Moreover, even if it were to be conceded that an action for damages is the appropriate remedy against those defendants who have disposed of optioned stock and that the statute of limitations might be pleaded by such persons, there is nothing in the present record to show when such causes of action for damages arose against such individual defendants. Accordingly, I decline to apply the strict bar of the three year statute of limitations in response to American's motion."

Elster et al. v. American Airlines, Inc. et al., 128 A. 2d 801. William E. Taylor, Jr. of Wilmington, and William E. Houdek of Pomerantz, Levy & Houdek of New York City, for plaintiffs. Richard F. Corroon of Berl, Potter & Anderson, of Wilmington, and Debevoise, Plimpton & McLean of New York City for defendant American Airlines, Inc.

NEW YORK

Court refuses to enjoin directors from changing record date for determining stockholders entitled to vote at annual meeting, after original meeting had been adjourned for six weeks.

"On March 28, 1956, the board of directors of defendant corporation fixed April 9, 1956, as the record date for determining what stockholders would be entitled to vote at the annual meeting of stockholders scheduled to be held on May 7, 1956. The meeting started on May 7, 1956, but was adjourned, without the nomination or election of any directors, to June 19, 1956. On June 7, 1956, the board of directors fixed June 8, 1956, as the record date for the adjourned meeting. The legal question presented, on this motion for a temporary injunction, is whether the board of directors was, as plaintiffs claim, without power to change the record date fixed for the meeting of May 7, notwithstanding the fact that the changed record date relates only to matters to be voted upon at the adjourned date, more than six weeks later."

The Supreme Court, Special Term, New York County, Part III, denied a motion by stockholders to enjoin the directors from changing the record date. In the course of its opinion, the court remarked: "Since the board was under no *obligation* to fix any record date for the original meeting or for the adjourned meeting, this court is unable to perceive any valid reason for denying to the board the power to change the record date, for the purposes of the adjourned meeting, from that fixed for the original meeting, held more than six weeks prior to the date set for the adjourned meeting. No statute or decision holding that the board has no such power is cited by plaintiffs. In the absence of authority to the contrary, this court is of opinion that both logic and public policy are in favor of a holding that the board has power to change a previously fixed record date in the circumstances here presented."

McDonough et al. v. The Foundation Company et al., 155 N. Y. S. 2d 67. Manning, Hollinger & Shea (Edwin A. Lewis, Ralph L. Ellis and William E. De Bevoise, of counsel), of New York City, for plaintiffs. Wickes, Riddell, Bloomer, Jacobi & McGuire and Milbank, Tweed, Hope & Hadley of New York City, for defendants.

PENNSYLVANIA

Statute authorizing classification of directors and staggering of their terms, upheld.

"The sole question presented in this action for a declaratory judgment" said the Supreme Court of Pennsylvania, "is whether the right granted by statute to classify corporate directors and stagger their terms violates the right conferred by the Constitution upon the stockholders to cumulate their votes in

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all elections for directors. Are these two rights so incompatible as to make their co-existence impossible?"

The Supreme Court of Pennsylvania, after an examination of the pertinent provisions of the State Constitution and of the statutes, affirmed a decision that the statute granting the right to classify directors and stagger their terms does not violate the right conferred by the Constitution upon stockholders to cumulate their votes in elections for directors.

Janney v. Philadelphia Transportation Company et al., 128 A. 2d 76. Gordon & Gordon, Samuel Gordon, Leonard B. Gordon, of Philadelphia, for appellant. Hamilton C. Connor, Jr., Charles I. Thompson, Jr., Ballard, Spahr, Andrews & Ingersoll of Philadelphia, for Philadelphia Transportation Co. and Anderson, Baine, Brehman, Pratt, Reavis, Rossell, Titus. John B. Prizer, Philip Price, of Philadelphia, for Pennsylvania R. Co., amici curiae. Francis H. Scheetz of Philadelphia, for The Curtis Pub. Co., amicus curiae. Elder W. Marshall, W. P. Hackney, J. Tomlinson Fort, Reed, Smith, Shaw & Mc Clay, of Pittsburgh, for Latrobe Steel Co. and American Window Glass Co., amici curiae.

WEST VIRGINIA

No limitation may be placed on stockholders' right to vote for directors or managers.

The relator West Virginia corporation sought to compel the respondent Secretary of State to receive a certificate of charter amendment which would effect a change in the authorized capital stock from a single class to two classes, one of Class "A" common stock and one of Class "B" common stock, with all voting rights to be vested exclusively in the holders of the Class "B" common stock.

The Supreme Court of Appeals of West Virginia, after an examination of the pertinent constitutional and statutory provisions denied a peremptory writ of mandamus sought by the corporation. The court reached the following conclusions: "1. Section 4, Article XI, of the Constitution of this State, provides in clear and unambiguous language that every shareholder shall have the right to vote his or her shares of stock in the election of directors or managers of an incorporated company in any manner provided for therein. Sections 22 and 66 of Article 1, Chapter 31 of the Code, in so far as they purport to authorize the issuance of shares of stock, the owners of which are deprived of the right to vote at elections of directors or managers of an incorporated company, contravene the plain provisions of Section 4, Article, XI, of the Constitution of this State, and are invalid. 3. A constitutional provision which is clear and unabiguous cannot be changed or made uncertain by a statute subsequently enacted." Summing up the effect of its conclusions, the court said: "This decision renders invalid the provisions contained in Code, 31-1-22, Code, 31-1-66, and all other Acts of the Legislature, wherein it is provided that any limitation may be placed upon the right of an owner of a share of stock in any corporation, created under the laws of this State, to vote for directors or managers of such corporation, but such Acts are, by this decision, made

invalid to that extent only, and all parts of such Acts not in conflict with the provisions of Article XI, Section 4, of the Constitution of this State, remain in full force and effect."

State ex rel. Dewey Portland Cement Company v. O'Brien, Secretary of State, 96 S. E. 2d 171. Fitzpatrick, Marshall, Huddleston & Bolen, E. A. Marshall, Wm. C. Beatty, of Huntington; Gage, Hillix, Moore & Park of Kansas City Mo., for relator. John G. Fox, Atty. Gen., Angus E. Peyton, Charles R. McElwee, Asst. Attys. Gen., for respondent. Stathers & Cantrall, Arch M. Cantrall of Clarksburg; Charles C. Wise, Jr., of Charleston, and C. H. Hardesty, Jr., of Fairmont, amici curiae for Simpson G. M. C. Truck Co., Fairmont Auto Supply Co., and Sanitary Baking Co. McCamic & Tinker of Wheeling, amicus curiae for Cooperative Transit Co. and Owl Office Outfitters. (*It is anticipated that a constitutional amendment stemming from this decision will be submitted to the voters.*)

foreign corporations

IDAHO

Unlicensed foreign corporation, doing business in Idaho, denied right to enforce contract in federal court in Idaho.

Plaintiff California corporation, not authorized to do business in Idaho, sued defendant Idaho resident in the District Court of the United States, District of Idaho, Eastern Division, to recover a balance due, with interest, for goods sold to defendant and delivered by truck and rail. As a defense, defendant contended that plaintiff was doing business in Idaho during the period mentioned in the complaint, although not authorized or licensed to do business in the state, as required by Section 30-504, denying an unlicensed foreign corporation the right to sue upon and enforce contracts made by it prior to qualification.

The federal court, after an examination of pertinent decisions of the Idaho Supreme Court, ruled in favor of defendant upon a motion by plaintiff to strike this defense on the ground that it was immaterial and did not state a defense, remarking: "It is clear that, under the decisions of the Supreme Court of Idaho, a foreign corporation cannot maintain an action in any of the courts of this state to enforce a contract entered into at a time when the corporation has not complied with the requirements of Secs. 30-501 et seq., Idaho Code. A foreign corporation which has not complied with said statutory provisions cannot sue on such a contract in the federal court in Idaho."

California Brewing Company v. Rino, 143 F. Supp. 801, Merrill & Merrill of Pocatello, and Eisner & Titchell of San Francisco, Cal., for plaintiff. Louis F. Racine, Jr., of Pocatello, for defendant.

NORTH CAROLINA

Unlicensed corporation, effecting interstate deliveries by its own trucks, regarded as doing business so as to be subject to service of process.

Defendant unlicensed foreign corporation, which had not appointed a process agent, was served under G. S. Sec. 55-38 through process served upon the Secretary of State. Plaintiff acted as commission agent to sell defendant's products, manufactured elsewhere, throughout North Carolina and submitted an affidavit that defendant transported the goods into North Carolina in its own trucks, operated by its own agents, who delivered the goods to the customers and took receipts for the deliveries.

The Supreme Court of North Carolina, in upholding the service, observed: "It must be conceded the taking of orders in this State to be transmitted to the home office of a foreign corporation for acceptance and the shipment by common carrier of its goods into this State is not doing business within the meaning of G. S. 55-38. In that case the foreign corporation's activities do not take place here. The corporation's control over the shipment ceases at the time and place of delivery to the carrier. However, in this case the defendant not only manufactured the goods, but it transported them to North Carolina in its own trucks. It completed the transactions by making deliveries here. One of the essential purposes of the corporation necessarily was the placing of its manufactured products in the hands of its customers. In making the deliveries here the defendant was performing an essential part of its business. We conclude the evidence before the trial court was sufficient to support the finding the defendant was doing business in North Carolina."

Harrington v. Croft Steel Products, Inc., 94 S. E. 2d 803. W. H. McElwee, Jr., W. L. Osteen and Ralph Davis of North Wilkesboro, for defendant-appellant. Whitlock, Dockery, Ruff & Perry by P. C. Whitlock, James O. Cobb, Jr., of Charlotte, for plaintiff, appellee.

taxation

ALABAMA

City license on itinerant wholesale distributors of groceries upheld with respect to wholesaler making deliveries in interstate commerce.

Plaintiff corporation, which made deliveries and unloadings from its trucks in defendant city of groceries brought into Alabama from a point in Georgia, appealed to Court of Appeals of Alabama from a judgment denying it recovery of fees paid under an ordinance. This ordinance imposed an annual fixed-sum license tax on itinerant wholesale grocers who unload, deliver, dis-

tribute or dispose of at wholesale in the city of groceries transported from a point outside the city to a point within the city.

In affirming a judgment upholding the tax, the court ruled that the ordinance was not unconstitutional on the ground that it differentiated between interstate and intrastate commerce and that it was not discriminatory because different taxes were imposed on itinerant persons unloading, delivering, distributing or disposing of merchandise other than wholesale groceries in the city and local wholesale merchants.

West Point Wholesale Grocery Company v. City of Opelika, 87 So. 2d 661. (Writ of certiorari denied by Supreme Court of Alabama, 87 So. 2d 667.) Denson & Denson and Yetta G. Samford, Jr., of Opelika, for appellant. McKee & Maye of Opelika, for appellee. (*Appeal filed in the Supreme Court of the United States, October* 4, 1956*; Docket No.* 478. *Jurisdiction noted, December* 3, 1956.)

ILLINOIS

Franchise tax held not payable by qualified foreign pipe line engaged exclusively in interstate commerce in state; increased license fee ruled payable and refusal of withdrawal upheld.

Appellant Delaware corporation was qualified to do business in Illinois, but engaged in no intrastate business there. All its activities in Illinois were devoted exclusively to its business of transporting oil or oil products in interstate commerce. It qualified to do business in Illinois on May 14, 1952. It was first assessed for an annual franchise tax for the year commencing July 1, 1955 and for an additional license fee for the same year. At a hearing before the Secretary of State, at which appellant contended it was not liable for the assessments, it was advised that the franchise tax would have to be paid unless it could withdraw by filing an application for withdrawal prior to July 1, 1955. Accordingly, appellant submitted an application for a certificate of withdrawal on June 29, but modified this by stating that "said business is exclusively in interstate commerce and said property is used exclusively in interstate commerce", after a printed phrase which reads as follows: "That no portion of its issued shares at this time is represented by business transacted or property located in this state". The Secretary of State refused the application, referring to an Illinois decision to the effect that ownership and control of real property in Illinois in itself was the transaction of business there and that he knew from reliable sources that the appellant corporation did in fact own real estate in Illinois. After payment of the franchise tax and additional license fees under protest, appellant sought a refund in this action and to compel the Secretary of State to issue a certificate of withdrawal as of June 30, 1955.

The Illinois Supreme Court reversed a judgment in favor of the state, ruling that, under decisions of the Supreme Court of the United States, "It was beyond the power of Illinois to levy the franchise tax in question". The court, however, upheld the Secretary of State in refusing to allow ap-

pellant to withdraw from Illinois and thus permit it to escape assessment of the increased license fee, rejecting the view that the section imposing the fee had no application when all such property was devoted exclusively to interstate commerce. Finding no such limitation in the statute, the court held that "the action of the Secretary of State in refusing a certificate of withdrawal was entirely proper and within the letter and spirit of the law".

*Sinclair Pipe Line Co. v. Carpentier,** Illinois Supreme Court, January 27, 1957. Giffin, Winning, Lindner & Newkirk (Montgomery S. Winning and James M. Winning, of counsel), of Springfield, for appellant. Latham Castle, Attorney General, (Mark O. Roberts and Lucien S. Field, of counsel), of Springfield, for appellees. (140 N. E. 2d 115.)

* The full text of this opinion is printed in the **State Tax Reporter**, Illinois, page 10,116.

MARYLAND

Use tax ruled applicable where unlicensed foreign corporation mailed goods, on orders solicited by independent contractors, direct to local purchasers.

"At issue in this appeal," the Court of Appeals of Maryland observed, "is the right of Maryland to compel an unqualified foreign corporation to collect the use tax on goods shipped by it direct to resident purchasers on orders solicited within but accepted without the State. The lower court held that the State had this right and Topps Garment Corp., the out of state vendor, appeals." Goods ordered by local solicitors for the vendor, but not on its payroll, were mailed, after acceptance outside Maryland, direct to the purchaser. The vendor contested the validity of the tax, as assessed, under the commerce clause and the due process clause of the Federal Constitution.

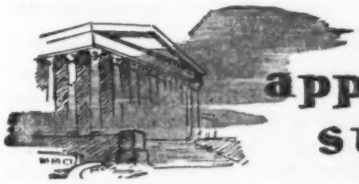
The court, after an examination of decisions regarded as applicable, many of them cases involving jurisdiction over foreign corporations for the purposes of service of process upon them, affirmed the judgment upholding the tax.

*Topps Garment Mfg. Corp. v. State of Maryland,** 128 A. 2d 595. Frederick P. McBriety (McBriety, Mace & Matthews, on the brief), of Cambridge, for appellant. Frank T. Gray, Asst. Atty. General, and Edward F. Engelbert, Counsel, Retail Sales Tax Division, (C. Ferdinand Sybert, Attorney General, on the brief), of Baltimore, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Maryland, page 10,292.

state legislation

Minnesota — Chapter 33, Laws of 1957, provides that an open-end investment company which is obliged to redeem or repurchase its shares may apply to such redemption or repurchase that part of its stated capital which is proportionate to that part of its outstanding shares so redemeed or repurchased. It also sets up the procedure to be followed by such a company in filing articles of reduction of stated capital. When stated capital is reduced by this procedure, no distribution to shareholders may be made from stated capital unless the fair market value of the assets remaining after such distribution shall be at least equal to the aggregate of its liabilities and of its stated capital as so reduced.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA Docket No. 478. *West Point Wholesale Grocery Co. v. City of Opelika*, 87 So. 2d 661, 667. (The Corporation Journal, April—May, 1956, page 334.) City license tax upon itinerant or transient wholesale grocers—validity. **Appeal filed, October 4, 1956. Jurisdiction noted, December 3, 1956. (77 S. Ct. 225.)**

MICHIGAN. Docket No. 487. *United States et al. v. City of Detroit*, 77 N. W. 2d 79. (The Corporation Journal, February—March, 1957, page 312.) Property tax on lessee of property leased by Federal government. **Appeal filed, October 8, 1956. Probable jurisdiction noted, January 14, 1957. (77 S. Ct. 353.)**

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* Data compiled from **CCH U. S. Supreme Court Bulletin, 1956–1957.**

regulations and rulings

Florida — A domestic corporation for profit "doing business" in Florida, regardless of recitals in its articles of incorporation concerning subscriptions to capital stock, which has no outstanding capital stock, is not required to pay the capital stock tax. "Doing business" depends on the corporation's engaging in business activities or possessing property other than money not invested or drawing interest. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-056.)

No additional charter tax is due by the continuing corporation of merged domestic corporations if the amount of authorized capital does not exceed the total sum prior to merger and the shares on which filing taxes have previously been paid are actually included in the authorized capital existing at the time of the increase. The continuing corporation of merged foreign corporations permitted to do business in Florida is entitled to credit of the charter tax it previously paid. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-055.)

Oklahoma — A mortgage and deed of trust covering only oil and gas leases do not constitute a mortgage on real property and therefore are not subject to the real estate mortgage tax. An oil and gas lease is not real estate, but is considered an interest in real estate. (Opinion of the Attorney General, State Tax Reporter, Oklahoma, ¶ 200-056.)

South Carolina — The question of whether the United States is required to pay for supplies procured in a state at a price inclusive of the sales tax imposed by the state rests upon a determination of whether the incidence of the tax is on the vendor or on the vendee. Where the incidence of the tax is on the vendor, the United States has no right to purchase supplies within the territorial jurisdiction of the state on a tax-free basis. On the other hand, where the incidence of the tax is on the vendee, the United States, in purchasing supplies for official use, is entitled, under its constitutional prerogative, to make purchases free from state taxes and to recover any amount of such taxes which may have been paid by it. The South Carolina sales tax law imposes a tax on the vendor, although the vendor may pass the tax on to the vendee, the United States is not immune from taxation. (Opinion of the Comptroller General of the United States, State Tax Reporter, South Carolina, ¶ 200-034.)

South Dakota — Exemptions from taxation must exist as of the assessment date. Property is not exempt because it subsequently passed to an owner who is exempt from taxation. (Opinion of the Attorney General, State Tax Reporter, South Dakota, ¶ 24-069.)

Texas — The long-term outstanding notes of a corporation, regardless of the purpose for which the notes were executed, should be included in the formula for computing the franchise tax due from a corporation. (Opinion of the Attorney General, State Tax Reporter, Texas, ¶ 200-173.)

some important matters

For April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Franchise Tax due April 1; payable April 30.

Arizona — Income Tax Return due on or before April 15.
Quarterly Withholding Tax due on or before April 30.

Arkansas — Corporation Income Tax Return and Returns of Information at source due on or before May 15.

California — Quarterly Retail Sales Tax due on or before April 30.

Colorado — Corporation Income Tax Return due on or before April 15.
Annual Report and License Tax due May 1.
Quarterly Withholding Tax due on or before April 30.

Connecticut — Quarterly Retail Sales Tax due on or before April 30.

Delaware — Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to residents of Delaware during 1956.

Withholding at source Returns due April 30.—Domestic and Foreign Corporations paying compensation to Delaware employees.

District of Columbia — Franchise (Income) Tax Return due on or before April 15.

Annual Reports of companies incorporated, reincorporated or qualified under the Business Corporation Act of 1954, due April 15.

Georgia — Corporation Income Tax Return and Returns of Information at the source due April 15.

Idaho — Income Tax Return due on or before April 15.

Indiana — Quarterly Gross Income Tax due on or before April 30.

Iowa — Quarterly Retail Sales Tax due on or before April 30.
Corporation Income Tax Return due on or before April 30.
Returns of Taxes Withheld and of Information at the Source due April 30.

Kansas — Corporation Income Tax Return due April 15.

Kentucky — Income Tax and Corporation License Tax due on or before April 15.
Quarterly Withholding Tax due on or before April 30.

Louisiana — Corporation Income Tax Return due on or before May 15.

Maryland — Annual Report (Personal Property Return) and Franchise Tax Report and Tax due on or before April 15.—Domestic Corporations.
Income Tax Return due April 15.
Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.
Withholding Tax due on or before April 30.

Massachusetts — Corporation Excise Tax Return due on or before April 10.

Michigan — Annual Report and Franchise Tax due on or before May 15.

Minnesota — Returns of Information at the source due April 15.

Mississippi — Corporation Income Tax Return and Returns of Information at the source due on or before April 15.

Missouri — Quarterly Retail Sales Tax due on or before April 15.
Income Tax Returns due on or before April 15.

Montana — Returns of Information at the source due on or before April 15.
Annual Statement due in April and May.—Foreign Corporations.

New Jersey — Franchise Tax Report and Tax due on or before April 15.

New Mexico — Corporation Income Tax Return due on or before April 15.
Franchise Tax due May 1.

New York — Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A Tax Law) and one-half of tax due May 15.—Business Corporations, Holding Companies and Investment Trusts.

North Carolina — Intangible Property Tax Return and Returns of Information at the source due April 15.

North Dakota — Income Tax Return and Returns of Information at the source due on or before April 15.
Quarterly Retail Sales Tax due on or before April 30.

Oregon — Corporation Excise (Income) Tax Return due on or before April 15.
Quarterly Withholding Tax due on or before April 30.

Pennsylvania — Corporation Income Tax Return due on or before April 15.

Rhode Island — Business Corporation Tax due on or before May 1.

South Dakota — Quarterly Retail Sales Tax due on or before April 15.

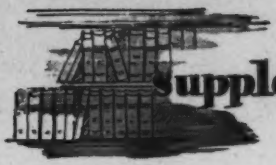
Texas — Franchise Tax due May 1.

Utah — Quarterly Retail Sales Tax due on or before April 30.

Vermont — Income (Franchise) Tax Return due on or before May 15.
Quarterly Withholding Tax due on or before April 30.

Virginia — Corporation Income Tax Return due on or before April 15.
Corporation Income Tax due June 1.

West Virginia — License Tax Report due in April.—Foreign Corporations.
Quarterly Business and Occupation (Gross Sales) Tax due April 30.



Supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

What Constitutes Doing Business (1956 Edition). A 182-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Spot Stocks Mean More Sales. A review of the advantages *and* dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

Corporate Tightrope Walking. Of interest to counsel for and the officers of any corporation carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

Before and After Qualification. A complete list of aids and services—including those supplied without charge—which CT furnishes for lawyers working on foreign corporation matters.

Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

A Pretty Penny . . . Gone! What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

THE CORPORATION TRUST COMPANY
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Form 3547 requested

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

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